



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Cars on Broadway, Inc.

Case No. TR-12-0037

FINAL DECISION

On March 28, 2012, Tom Maxon filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Cars on Broadway, Inc., (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Dunn County News, a newspaper published in Menomonie, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 3, 2013. No additional claims were filed. The Administrative Law Judge issued a Preliminary Determination in this matter on February 7, 2013. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Mark and Christina Rosencranz
Cars on Broadway, Inc.
2911 150th Avenue
Glenwood City, WI 54013

Tom Maxon
E6931 County Road B
Colfax, WI 54730

Continental Western Insurance Company
Bond Department
P O Box 80439
Lincoln, NE 68502-0439

FINDINGS OF FACT

1. Cars on Broadway, Inc., (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 1221 North Broadway Street, Menomonie, Wisconsin. The dealership is out of business.

2. The Dealer had a bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force from March 1, 2005, until it was cancelled effective April 28, 2011. (Bond No. 0102922 from Continental Western Insurance Company.)

3. On March 19, 2009, Tom Maxon purchased a 2000 Chevy Silverado 1500 truck, vehicle identification number 1GCEK19T2YE198193, from the Dealer. Mr. Maxon also purchased an extended warranty covering the vehicle. The extended warranty purchased by Mr. Maxon was administered by Interstate National Dealer Service, Inc., (Interstate) and cost \$1250.00. Mr. Maxon purchased the extended warranty through the Dealer. The extended warranty covered Mr. Maxon's truck for five years or 100,000 miles.

4. Tom Maxon did pay to the Dealer the \$1250.00 premium for the extended warranty. In January of 2010, Mr. Maxon traded the vehicle in on the purchase of a different vehicle. He contacted Interstate to cancel the extended warranty and obtain a refund on the unused portion of the warranty. The portion of the warranty that had not been used was 63.3%, so the amount of the refund owed to Mr. Maxon is \$791.25 ($\$1250 \times 63.3\%$). Mr. Maxon did not receive the refund.

5. On June 15, 2011, Tom Maxon filed a complaint with the Department against the Dealer. The investigator from the Department contacted Interstate and was informed that the Dealer had only forwarded \$728.00 of Mr. Maxon's premium payment to Interstate. Interstate had sent a check in the amount of \$411.07 ($\$728.00 \times 63.3\%$) to the Dealer with the understanding that the Dealer would make up the difference and send the full refund to Mr. Maxon. The Dealer cashed the check from Interstate but did not forward any portion of the refund to Mr. Maxon.

6. On March 28, 2012, Tom Maxon filed a claim against the surety bond of the Dealer in the amount of \$791.25, the amount of the refund he is entitled to for the unused portion of the premium he paid for the extended warranty.

7. The Dealer's retention of the refund Tom Maxon was entitled to for the unused portion of the extended warranty he purchased through the Dealer constitutes a violation of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer). The loss sustained by Tom Maxon was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

8 Tom Maxon submitted documentation to support a bond claim of \$791.25. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Continental Western Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)]*.

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. In this case, the Dealer violated Wis. Stat. § 218.0116(1)(c). Wis. Stat. § 218.0116(1)(c) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Mr. Maxon sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. Tom Maxon's claim arose in January of 2010, when he cancelled the extended warranty he had purchased through the Dealer and a refund of the unearned portion of the premium was not paid to him. The surety bond issued to the Dealer by Continental Western Insurance Company covers a one-year period commencing on March 1, 2009. The claim arose during the period covered by the surety bond.
2. Tom Maxon filed a claim against the motor vehicle dealer bond of the Dealer on March 28, 2012. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. Mr. Maxon sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Mr. Peterson has submitted documentation to support a claim in the amount of \$791.25.
4. The Division of Hearings and Appeals has authority to issue the following orders.

ORDER

The claim filed by Tom Maxon against the motor vehicle dealer bond of Cars on Broadway, Inc., is APPROVED in the amount of \$791.25. Continental Western Insurance Company shall pay Mr. Maxon this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on March 19, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
MARK F. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.